Office-Supreme Court, U.S.
FILED
JUL 7 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1070

IN THE
Supreme Court of the United States
OCTOBER TERM, 1980

DONNA RIDGWAY and THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
Petitioners,

v.

HAYLEY D. RIDGWAY, LAURIE R. RIDGWAY, and BRADY L. RIDGWAY, by their mother and next friend, APRIL D. RIDGWAY,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR RESPONDENTS

CURTIS WEBBER
83 Pleasant Street
Auburn, Maine 04210
(207) 784-4563
Court-appointed Counsel for Respondents

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

QUESTION PRESENTED

When a serviceman has negotiated a settlement agreement with his wife by virtue of which he agrees to maintain his service life insurance in force after the divorce for the benefit of his children, which agreement is subsequently incorporated into the divorce decree, do the Supremacy Clause and the Servicemen's Group Life Insurance Act prohibit a state court from imposing a constructive trust on the insurance proceeds for the benefit of the children if the serviceman dies after naming his second wife as beneficiary in defiance of the agreement?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

SUMMARY OF ARGUMENT 1

ARGUMENT 5

I. THE DECISION OF THE MAINE SUPREME COURT DOES NOT PRESENT A CONFLICT WITH FEDERAL LAW 5

A. *The Right Of An Insured Serviceman To Designate The Beneficiary Under His Servicemen's Group Life Insurance Policy Does Not Preclude The Imposition Of a Constructive Trust On The Proceeds* 5

1. The great weight of authority in cases involving private life insurance contracts supports the imposition of a constructive trust on facts such as those presented in this case 5

2. 38 U.S.C. §770(a) does not require a different result where servicemen's group life insurance is concerned 8

B. *The Previous Decisions Of This Court Support The Rule That Statutes Regulating Federal Property Rights Will Not Be Permitted To Be Used As The Instruments Of Fraud* 15

C. *The Ridgway Children Are Not "Creditors" Within The Meaning Of 38 U.S.C. §770(g)* 19

CONCLUSION 28

TABLE OF AUTHORITIES

Page

Cases:

Bonner v. U.S.,
222 F.Supp. 539 (D. Mass. 1963) 22

Brantley v. Skeens,
266 F.2d 447 (D.C. Cir. 1959) 11

Brinson v. Brinson,
334 F.2d 155 (4th Cir. 1964) 11

Burgess v. Murray,
194 F.2d 131 (5th Cir. 1952) 15

Cannon v. University of Chicago,
441 U.S. 677, 99 S.Ct. 1946 22

Department of Health & Rehab. Services v. Davis,
616 F.2d 828 (5th Cir. 1980) 20

Equitable Life Assurance Soc. v. Wilkins,
44 F.Supp. 594 (E.D. N.Y. 1942) 6

Free v. Bland,
369 U.S. 663 (1964) 3, 15, 16, 17, 18

Gaskins v. Security-First Nat. Bank,
30 Cal.App.2d 409, 86 P.2d 681 (Dist. Ct. of App. 1939) 6, 19

Great Amer. Reserve Ins. Co. v. Maxwell,
555 P.2d 988 (Colo. Ct. of App. 1976) 6

Goomer v. U.S.,
471 F.2d 1 (5th Cir. 1973) 11

Gutierrez v. Madero,
546 S.W.2d 187 (Tex. Civ. App. 1978) 18

Heifner v. Soderstrom,
134 F.Supp. 174 (n.D. Iowa 195) 22

Hisquierdo v. Hisquierdo,
439 U.S. 572, 99 S.Ct. 813 (1979) 3, 5, 17, 21, 27

Hundertmark v. Hundertmark,
372 Pa. 138, 93 A.2d 856 (1952) 7, 9

In re Bemowski's Guardianship,
3 Wis.2d 133, 88 N.W.2d 22 (1958)..... 20

In re Flanagan,
31 F.Supp. 403 (D. D.C. 1940) 19

Johnson v. Prudential Ins. Co.,
182 Neb. 673, 156 N.W.2d 812 (1968) 8

Jones v. U.S.,
331 F.Supp. 114 (D. Tenn. 1971) 11

Massachusetts Linotyping Corp. v. Fielding,
312 Mass. 147, 43 N.E.2d 521 (1942)..... 6

McKissick v. McKissick,
560 P.2d 1366 (Nev. 1977)..... 6

Mutual Life Ins. Co. v. Armstrong,
117 U.S. 591 (1886)..... 11

Prudential Ins. Co. v. King,
453 F.2d 925 (8th Cir. 1971) 8

Re Bagnall's Guardianship,
238 Iowa 905, 24 N.W.2d 597 (1947) 19

Richards v. Richards,
58 Wis.2d 990, 206 N.W.2d 134 (1973) 7

Savoid v. Dist. of Columbia,
288 F.2d 851 (D.C. Cir. 1961)..... 20

Schlaefer v. Schlaefer,
112 F.2d 177, 130 A.L.R. 1014 (D.C. Cir. 1940)..... 21

Shoemaker v. Shoemaker,
263 F.2d 931 (6th Cir. 1959) 11

Simonds v. Simonds,
45 N.Y.2d 233, 380 N.E.2d 189 (1978)..... 7, 9, 18

Stratton v. Servicemen's Group Life Ins. Co.,
422 F.Supp. 1119 (D. Iowa 1976)..... 8

Stribling v. U.S.,
419 F.2d 1350 (8th Cir. 1969) 8, 9

Suydam v. U.S.,
404 F.2d 1369 (D.C. Cir. 1968).....14

Voelkel v. Tohulka,
238 Ind. 588, 141 N.E.2d 344 (1957), *cert. denied*
355 U.S. 891 (1957).....14, 17, 19, 23

Weymann v. Wilson,
320 F.Supp. 980 (M.D. Fla. 1970) 13

Willis v. U.S.,
291 F.2d 5 (6th Cir. 1961)..... 10

Wissner v. Wissner,
338 U.S. 655 (1950).....13, 18, 20, 22

Yiatchos v. Yiatchos,
376 U.S. 306 (1964)..... 3, 16, 17

Statutes:

5 U.S.C. §8705 .....10, 11
38 U.S.C. §454a 4, 19, 20
38 U.S.C. §717 .....11, 13
38 U.S.C. §717(a).....13, 15
38 U.S.C. §770 .....9, 15
38 U.S.C. §770(a)..... 8
38 U.S.C. §770(g).....4, 19, 20, 21, 23
38 U.S.C. §3101a 4, 22
42 U.S.C. §659 26

Miscellaneous:

American Law of Veterans (2d ed. 1954) 24
Annot., 54 A.L.R.2d 1422 (1957)..... 21
120 Cong. Record 40339 (1974)..... 27
5 Scott, *Law of Trusts* (3d ed. 1967) 4, 7, 16
U.S. Code Cong. & Ad. News (1965) 13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1070

DONNA RIDGWAY and THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Petitioners,

v.

HAYLEY D. RIDGWAY, LAURIE R. RIDGWAY, and BRADY L. RIDGWAY, by their mother and next friend, APRIL D. RIDGWAY,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR RESPONDENTS

SUMMARY OF ARGUMENT

I.

On facts similar to those presented in the case at bar, the courts have held with near unanimity in cases involving private insurance contracts that a constructive trust in favor

of the decedent's children will be imposed. They have reasoned that such equitable relief is necessary to prevent unjust enrichment of the substituted beneficiary (usually the second wife of the insured) resulting from the decedent's fraudulent conduct.

Relying on this authority, the Maine Supreme Judicial Court held below that a constructive trust of the insurance proceeds would be an appropriate remedy where Sergeant Ridgway had violated the term of the property settlement agreement with his ex-wife subsequently incorporated in the divorce decree in which he agreed to name his children as beneficiaries of his service life insurance policy and maintain it in force for their benefit. The Court found nothing in the wording of the Servicemen's Group Life Insurance Act (SGLIA) or its legislative history evidencing a Congressional policy which would be frustrated by this result.

Although petitioners have made much of the fact that the SGLIA gives an insured serviceman the right to designate whomever he chooses as beneficiary of the policy, the statutory language does no more than set forth the right of any insured to determine who is to receive the insurance proceeds together with a statement of the persons who would take if no beneficiary is named. Similar language would be found in any life insurance contract. Indeed, virtually identical language appears in other statutes establishing group life insurance programs for federal employees not in the military service. See e.g. 5 U.S.C. §8705 (Federal Employees Group Life Insurance Act). There is nothing in this unremarkable language which gives any hint of a Congressional purpose to displace equitable rules regarding the fraudulent disposition of insurance proceeds which state courts would otherwise apply.

Petitioners have also cited a number of cases holding that

federal law prohibits a state court in a divorce decree from limiting the right of a serviceman to name anyone he chooses to receive the proceeds of his SGLI policy. Respondents do not dispute that such is the law. The constructive device does not interfere with the insured serviceman's right to select the beneficiary of his choice, but merely freezes the funds in the hands of the beneficiary when unjust enrichment would otherwise result. The insurance company may therefore safely pay the named beneficiary in every case or, alternatively, may interplead the contending parties if it is in doubt as to the rightful recipient.

II.

Previous decisions of this Court have recognized that statutes regarding the disposition of federally treated property rights will not be permitted to be used as an instrument of fraud. In *Free v. Bland,* 369 U.S. 663, 670 (1962), the Court specifically noted an exception to the rules providing for the automatic tansfer of the decedent's interest in U.S. savings bonds to the survivor where a breach of trust has occurred. In *Yiatchos v. Yiatchos,* 376 U.S. 306 (1964), the Court deferred to the state court's finding that such a breach of trust had occurred and therefore held that the survivorship feature of a savings bond could not be used to deprive the widow of her interest in the community property. Although the Supremacy Clause was invoked to invalidate a community property claim to railroad retirement benefits in *Hisquierdo v. Hisquierdo,* 439 U.S. 572, 99 S.Ct. 802 (1979), the Court commented that there had been no "manipulation problem" as in *Free* and *Yiatchos. Id* at 99 S.Ct. 809.

The foregoing cases are consistent with general rules governing unjust enrichment and restitution. In such cases the defrauded claimant has always been permitted to pursue the property in which he has an interest even though it has been converted by the wrong-doer into a form which would otherwise be beyond the reach of creditors. See e.g. Scott, *Law of Trusts* 3581-3 (3d ed. 1967).

III.

Finally, petitioners have asserted that the insurance proceeds are protected in the hands of Donna Ridgway by 38 U.S.C. §770(g) which insulates them from the claims of creditors. Respondents are not among those against whom the protection was afforded.

Section 770(g) was added to the Servicemen's Group Life Insurance Act in 1970. At that time a substantial body of case authority ahd developed interpreting a nearly identical spendthrift provision in the National Service Life Insurance Act. See 38 U.S.C. 3101a (formerly 454a). Under settled rules of statutory interpretation, Congress is presumed to have intended that section 707(g) would be similarly construed.

In addition, it is absurd to suppose that Congress ever intended to create a haven in section 770(g) for servicemen bent on defrauding their children. On the contrary, the legislative history accompanying the Social Security Amendments of 1974 clearly indicates that Congress had lost patience with servicemen who were using the protection afforded by federal statutes to avoid supporting their children.

Petitioners have never attempted to defend Richard Ridgway's conduct in cutting off the only source of funds

available to support his children although he had contracted not to do so. They also have never denied that Donna Ridgway would be unjustly enriched if she were to receive the insurance money in issue. They have merely insisted that the imposition of a constructive trust is forbidden by federal law. It is submitted that petitioners have failed to show that the decision of the Maine Supreme Judicial Court does "clear and substantial damage to federal interests". *Hisquierdo v. Hisquierdo, supra,* at p. 808 of 99 S.Ct. Moreover,they have also failed to point to any justification based on articulated Congressional policy for construing the SGLIA in a manner so as to produce the obviously unjust result which they insist this Court must reach in the present case.

ARGUMENT

I.

THE DECISION OF THE MAINE SUPREME COURT DOES NOT PRESENT A CONFLICT WITH FEDERAL LAW.

A. The Right Of An Insured Serviceman To Designate The Beneficiary Under His Servicemen's Group Life Insurance Policy Does Not Preclude The Imposition Of A Constructive Trust On The Proceeds.

1. The great weight of authority in cases involving private life insurance contracts supports the imposition of a constructive trust on facts such as those presented in this case.

The fact situation presented in the case at bar is by no means unique. Many cases have been decided in other jurisdictions involving disputes between the first wife and children of a deceased insured and the second wife regarding the proper disposition of life insurance proceeds. The overwhelming weight of authority holds that where the decedent was required by a settlement agreement to make life insurance proceeds payable to his first wife or to the children of the first marriage, his subsequent designation of his second wife as the beneficiary under the policy will be ineffective to deprive his first wife or her children of the insurance proceeds. See e.g. *Equitable Life Assurance Soc. v. Wilkins,* 44 F.Supp. 594 (E.D. N.Y. 1942); *Great Amer. Reserve Ins. Co. v. Maxwell,* 555 P.2d 988 (Colo. Ct. of App. 1976); *Massachusetts Linotyping Corp. v. Fielding,* 312 Mass. 147, 43 N.E.2d 521 (1942); *McKissick v. McKissick,* 560 P.2d 1366 (Nev. 1977).

The existence of a property settlement agreement between the divorcing parties by virtue of which the serviceman commits himself to keep his military life insurance in force for the benefit of his former wife or children has generally been considered a critical element in cases in which a constructive trust has been imposed.[1] See e.g. *McKissick v.*

[1]Inexplicably, petitioners have omitted any mention of the property settlement agreement in their statement of the case although it was stipulated that negotiations took place between the parties and their attorneys over a period of several months concerning division of property, child support, disposition of Richard Ridgway's service life insurance policy and other matters which finally culminated in an agreement which was incorporated into the divorce decree. App. 33. Petitioners' only acknowledgment of the existence of the agreement is buried in a footnote. Pet'rs' brief, p. 26. The agreement is characterized as being merely "oral" although no reason appears why this is of any consequence, especially since it was incorporated into the divorce decree. Moreover, it was April Ridgway's *reliance* on this agreement as providing support for the children in the event of Richard's death which is the relevant consideration since it is this reliance coupled with Richard's fraudulent breach of his commitment which gives rise to the constructive trust.

McKissick, 560 P.2d 1336 (Nev. 1977). The courts have held that such an agreement constitutes a contract between the parties supported by valuable consideration on each side. *Hundertmark v. Hundertmark,* 372 Pa. 138, 93 A.2d 856, 858 (1952).

The existence of the property settlement agreement also affects the balance of equities between the parties which gives rise to the constructive trust. It is obvious that in negotiating a division of the marital property, April Ridgway may have made concessions in order to secure Richard's agreement to keep his military insurance in force as a potential source of support for the children. When Richard later made Donna the beneficiary of his service life insurance policy, he acted in defiance of his own agreement as well as being in contempt of the divorce decree.

Under these circumstances, the courts have held with near unanimity that the beneficiary of the life insurance policy holds the proceeds under a constructive trust for the benefit of those persons who would otherwise be deprived of the benefit of the bargain made by the insured. In a relatively recent opinion, Chief Judge Breitel has written that:

> In the words of Judge Cardozo, "(a) constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee." *Simonds v. Simonds,* 45 N.Y.2d 233, 380 N.E.2d 189, 193 (1978). See also *Richards v. Richards,* 58 Wis.2d 990, 206 N.W.2d 134, 136 (1973); 5 Scott, *Law of Trusts* §462 (3d ed. 1967).

Since Donna Ridgway would obviously be unjustly enriched if permitted to receive the insurance proceeds made payable to her through her husband's wrongful act, the Court below

as clearly correct under state law in imposing a constructive trust to prevent this result.

2. 38 U.S.C. §770(a) does not require a different result where servicemen's group life insurance is concerned.

Petitioners have argued that the decision of the Maine Supreme Court is inconsistent with federal law and with judicial decisions from other jurisdictions. In the first place, they suggest that the decision below violates federal law since it limits the right conferred upon a serviceman by the Servicemen's Group Life Insurance Act to change the beneficiary of his service life insruance whenever he pleases. Petitioners have devoted much energy to discussing cases in which inconsistent provisions of state law or state court divorce decrees were held to be pre-empted by federal statutes preserving a serviceman's right to change the beneficiary designation on his military life insurance at any time. See e.g. *Prudential Ins. Co. v. King,* 453 F.2d 925 (8th Cir. 1971); *Stribling v. U.S.,* 419 F.2d 1350 (8th Cir. 1969); *Stratton v. Servicemen's Group Life Ins. Co.,* 422 F.Supp. 1119 (D. Iowa 1976); *Johnson v. Prudential Ins. Co.,* 182 Neb. 673, 156 N.W.2d 812 (1968). The "conflict" which petitioners perceive is illusory since both respondents and the court below have conceded that the federal statutes in question supersede provisions of a state divorce decree requiring a serviceman to maintain his life insurance in force for the benefit of a wife or children by a prior marriage. The real issue is whether, after the designated The real issue is whether, after the designated beneficiary has received the insurance proceeds, he may nevertheless be subject to a constructive trust in favor of persons whose

equitable claims to the proceeds are superior to his own. Since none of the cases cited above even discuss the possibility that a constructive trust should be imposed, they add nothing to a resolution of the issue presented in the case at bar.

Petitioners have also cited the case of *Stribling v. U.S.*, 419 F.2d 1350 (8th Cir. 1969) for the proposition that strict compliance with the provisions for designating a beneficiary would be required under the SGLIA. Although it is conceded that, in writing the SGLIA, Congress may have given weight to the administrative convenience of the private life insurance companies participating in the program, the relevance of this observation is not immediately evident since no one contests the right of the insurance company to rely on the last beneficiar designation in its files. In response to a similar argument made in the context of non-military life insurance, it has been stated that:

> The cases which the appellee cites . . . enunciate the principle that to make an effective change of beneficiary where the right so to do is reserved to the insured, the requirements of the policy with respect to consonnant notification of the insurer must be fully complied with. No one disputes that principle. So far as the insurance company is concerned, the one entitled to the proceeds of a policy, upon its accrual as a liability of the company, is the person named at the time as the beneficiary of the policy in accordance with the company's rules and regulations. That is an entirely different matter than the question which this litigation presents. *Hundertmark v. Hundertmark,* 372 Pa. 138, 93 A.2d 856, 859 (1952). See also *Simonds v. Simonds,* 45 N.Y.2d 233, 380 N.E.2d 189, 192 (1978).

Petitioners have also purported to find in the language of 38 U.S.C. §770 providing for the serviceman's right to

designate the beneficiary of his SGLI policy a Congressional purpose to pre-empt any state court proceedings which might prevent the proceeds from passing to the person named. The language from which this implication is said to arise is quite unremarkable. It consists of a recitation of the line of succession to the insurance proceeds beginning with the beneficiary designated by the insured. Indeed, one would expect to find similar language in any private life insurance policy stating who would succeed to the insurance proceeds in default of a named beneficiary. Moreover, although it has been suggested that Congress may have been particularly solicitous regarding the testamentary desires of its military personnel, virtually identical language is used in 5 U.S.C. §8705 (Federal Employees Group Life Insurance Act) establishing a similar group life insurance program for civil service employees.

Although petitioners have argued that Congress did not intend to countenance any infringement on a serviceman's absolute discretion to name anyone he pleases as the beneficiary of his SGLI policy, they have also acknowledged that, in enacting the SGLIA, Congress subordinated the goal of carrying out the serviceman's intent to the administrative convenience of the private insurers carrying the group coverage. Pet'rs' brief, pp. 9-10. Whereas a serviceman could formerly have successfully changed the beneficiary designation under his NSLI policy by simply taking sufficent steps to manifest his intent to do so, see e.g. *Willis v. U.S.*, 291 F.2d 5 (6th Cir. 1961), section 770 of the new act required that a beneficiary designation be in writing and received "in the uniformed services" in order to be effective. The inevitable result was that in cases in which the insured's intent to change beneficiaries was clearly established, the designation was held to be ineffective because not

technically in compliance with the statute and accompanying regulations. See e.g. *Goomer v. U.S.*, 471 F.2d 1 (5th Cir. 1973); *Jones v. U.S.*, 331 F.Supp. 114 (D. Tenn. 1971). It is therefore clear that carrying out the intent of the insured serviceman was at most one of several competing Congressional objectives in enacting the SGLIA.

Although petitioners have also contended that a serviceman's beneficiary designation must be "strictly honored", pet'rs' brief, p. 6, it is assumed that they would nevertheless acknowledge the existence of at least *some* limitations on the exercise of this right based solely on equitable principles. It is well established, for example, that a life insurance beneficiary will be denied the insurance proceeds if he murders the insured. See e.g. *Mutual Life Ins. Co. v. Armstrong,* 117 U.S. 591 (1886). In the case of *Shoemaker v. Shoemaker,* 263 F.2d 931 (6th Cir. 1959), the Court of Appeals construed the language of 38 U.S.C. §717, similar to that of the SGLAI, conferring an unrestricted right upon a serviceman to select the beneficiary under his NSLI policy, as not requiring that payment be made to a beneficiary who had taken the life of the insured. The Court's decision was based on public policy "founded on equitable principles". *Id* at 932. Such a holding is clearly inconsistent with petitioners' insistence that the serviceman's beneficiary designation must be deferred to in every case.

Similarly, courts have interpreted the counterpart language of the Federal Employees Group Life Insurance Act, 5 U.S.C. §8705, as permitting judicial application of the equitable doctrine of "clean hands". Thus potential beneficiaries have been excluded if not considered to be worthy by reason of previous misconduct. See e.g. *Brinson v. Brinson,* 334 F.2d 155 (4th Cir. 1964); *Brantley v. Skeens,* 266 F.2d 447 (D.C. Cir. 1959). No reason appears

why this Court and the Maine Supreme Judicial Court were not equally at liberty to reject the insured's beneficiary designation on equitable principles in order to prevent unjust enrichment.

Although in the *Brantley* and *Brinson* cases no beneficiary had been specifically designated in writing by the insured,[2] petitioners would apparently make no distinction between cases where the insured had designated a specific person as beneficiary and those in which he had simply left the beneficiary to be determined under the statute. In both instances, petitioners apparently would insist that the imposition of a constructive trust to control the disposition of the insurance proceeds would interfere with the effectuation of the insured's "intent" even where his actual preference is unclear. Moreover, it becomes increasingly difficult to imageine that Congress intended that the beneficiary designation of the insured serviceman should pre-empt the application of equitable principles by state courts in deciding who should receive the insurance proceeds when, as in the case at bar, he has not even bothered to name a particular person and has simply allowed the designation to be made by default in accordance with a line of succession set forth in the statute.

Petitioners have been critical of the Maine Supreme Court's reliance on a statement by the Administrator of Veterans' Affairs in establishing the objectives of Congress in passing the Servicemen's Group Life Insurance Act. The statement in question was appended to the House Report on

[2]It should be noted that, in the case at bar, Richard Ridgway did not specifically designate Donna Ridgway as the beneficiary of his SGLI policy. Instead he requested that the proceeds be paid as "by law". Since he did not name Donna individually, it is at least conceivable that he believed that the children would get the money.

the bill. It was made in response to a Congressional request for an analysis of the legislation in question. The Administrator's review of the bill does not identify any Congressional purpose to enlarge the discretion of insured servicemen in selecting life insurance beneficiaries. See U.S. Code Cong. & Ad. News 3235-3241 (1965). In fact, nowhere in the legislative history of the act is there the slightest reference to such an objective or any hint of a Congressional intention to insulate the proceeds of the military insurance from the claims of all persons other than the named beneficiaries.[3]

The only reported case involving Servicemen's Group Life Insurance in which the possibility of impossing a constructive trust was discussed is *Weymann v. Wilson,* 320 F.Supp. 980 (M. D. Fla. 1970). In that case, the divorced wife of a deceased serviceman sued to recover the proceeds of a life insurance policy which he had designated his second wife to receive despite the existence of language in the divorce decree requiring him to retain his first wife as beneficiary. The Court's discussion of the subject of constructive trusts is contained in the following enigmatic paragraph:

> A constructive trust is a creature of equity. (Citing Florida case law.) The circumstances which warrant

[3]It should be noted that Congress did not even bother to include in the SGLIA the language guaranteeing the insured the right to change the beneficiary "at all times" and "without the consent of the beneficiary" which appears in the NSLIA. Compare 38 U.S.C. §770(a) with 38 U.S.C. 717(a). Whether or not this difference in language reflects a change in Congressional policy is not clear. In any event, the omission of this language which was quoted and relied on by this Court in *Wissner v. Wissner,* 338 U.S. 655 (1950), does not support petitioners' contention that Congress had become increasingly solicitous of the right of insured servicemen to make beneficiary designations free from any type of restraint.

> the imposition of a constructive trust are not present here. *Id* at p. 989.

Although one may quarrel with the court's conclusion on the facts, the significance of the opinion is that the court impliedly recognized that the imposition of a constructive trust under state law would not conflict with the SGLIA.

Few cases have arisen under the military insurance acts which preceded the SGLIA in which the possibility of imposing a constructive trust was discussed. Two such cases have been found, however, which appear to be exactly in point.[4] In both cases the cases the courts held that a constructive trust should be placed on the proceeds of NSLI policies in favor of persons other than those legally designated by the deceased servicemen as beneficiaries.

In the case of *Voelkel v. Tohulka,* 238 Ind. 588, 141 N.E.2d 344, *cert. denied* 355 U.S. 891, 78 S.Ct. 263, 2 L.Ed.2d 189 (1957), the defendant promised her brother that if he named her as the beneficiary of his military life insurance policy she would distribute the proceeds of the policy equally to his brothers and sisters. The serviceman was subsequently killed in action, but his sister refused to distribute the insurance proceeds as she had promised. The court ruled that she held the proceeds subjec to a constructive trust in favor of the relatives even though she was the sole beneficiary designated under a federal statutory provision identical with that which governs the case at bar.

---

[4]In addition to the two cases discussed hereafter, it should be noted that the District of Columbia Court of Appeals indicated in *Suydam v. U.S.*, 404 F.2d 1369 (D.C. Cir. 1968) that it would impose a constructive trust under facts such as those presented here even though the cestui que trust was not the person designated by the deceased serviceman as the beneficiary of his insurance policy. It is therefore completely inaccurate to characterize the *Suydam* decision, as petitioners do (see pet'rs' brief, p. 19), as specifically rejecting a constructive trust theory.

In *Burgess v. Murray,* 194 F.2d 131 (5th Cir. 1952), a serviceman made the proceeds of his military insurance payable to his father and/or sister. Later he wrote to his father saying that he or the serviceman's sister should use the proceedsfor the benefit of the insured's children. Although letter was not legally effective as a change of beneficiary under federal law, the court nevertheless imposed a constructive trust in favor of the children upon the death of the insured.

Petitioners have attempted to distinguish the *Voelkel* and *Burgess* cases on the grounds that the result reached by the courts in imposing a constructive trust was consistent with the intent of the deceased serviceman. In so contending, petitioners have missed the point. The issue is not whether the result is consistent with the serviceman's wishes, but whether stae law is pre-empted in every case by 38 U.S.C. §770(a) from interposing a constructive trust which will prevent the beneficiary designated by the deceased serviceman in accordance with the statute from retaining the proceeds. By conceding that a constructive trust may *ever* be imposed in such cases, regardless of the serviceman's wishes, on the basis of equitable considerations rather than a literal application of 38 U.S.C. § §717(a) and 770, petitioners have conceded away the issue on which they base their claim of federal jurisdiction.

B. The Previous Decisions Of This Court Support The Rule That Statutes Regulating Federal Property Rights Will Not Be Permitted To Be Used As The Instruments Of Fraud.

In the case of *Free v. Bland,* 369 U.S. 663 (1964) this Court determined that the surviving co-owner of U.S. savings bonds purchased with community funds was entitled

to ownership of the bonds despite a spouse's conflicting claim based on community property law. The Court noted in passing, however, that:

> The Solicitor General, appearing as *amicus curiae,* acknowledges that there is an exception implicit in the savings bond regulations, including the survivorship provision, so that federal bonds will not be a "sanctuary for a wrongdoer's gains." With this, we agree. The regulations are not intended to be a shield for fraud and relief would be available in a case where the circumstances manifest fraud or a breach of trust tantamount thereto on the part of a husband while acting in his capacity as manager of the general community property. *Id.* at 670.[5]

The issues left open in *Free v. Bland* was squarely presented in *Yiatchos v. Yiatchos,* 376 U.S. 306 (1964). In that case, U.S. savings bonds were purchased with community funds by Mr. Yiatchos in the names of himself and his brother. The Court deferred to the determination of the state court that Yiatchos had abused his position of trust as the manager of the community property in placing the proceeds beyond his wife's reach. In this connection, the Court stated that:

> It would seem obvious that the bonds may not be used as a device to deprive the widow of property rights which she enjoys under Washington law and which would not be transferrable by her husband but for the survivorship provisions of the federal bonds. *Id.* at 309.

---

[5]The Court's observation is consistent with general principles governing the law of trusts. The rule is that the victim of fraud may pursue the misappropriated property even though it has been converted into a form which could not otherwise be reached by creditors. 5 Scott, *Law of Trusts* 3581-2 (3d ed. 1967). The rule also applies to the proceeds of an insurance policy paid for with misappropriated funds despite the existence of a statute exempting the proceeds from the claims of creditors. *Id* at 3583.

More recently, the Court has held in *Hisquierdo v. Hisquierdo,* 439 U.S. 572, 802 (1979), 99 S.Ct. held that retirement benefits under the Railroad Retirement Act are not subject to a spouse's community property claims in a divorce action. The Court specifically found, however, that there had been no "manipulation problem" as in *Free* and *Yiatchos. Id.* at p. 809 of 99 S.Ct.

The present case is controlled by the exception in *Free v. Bland* and the holding in *Yiatchos v. Yiatchos.* Richard Ridgway entered a binding agreement with his wife to keep his service life insurance in force for the benefit of the children as an alternative source of support if he should die before they became of age. The property settlement agreement was the product of extended negotiations between the parties in which concessions were made by April Ridgway in order to gain an agreement with Richard. App. 33. The agreement was in turn made part of the divorce decree and was approved by the court. App. 33. Because there was no effective way of policing the agreement, April Ridgway and the children had to rely on Richard to keep his part of the bargain as far as the insurance was concerned just as Mrs. Yiatchos relied upon her husband to protect her interest in the community property. Richard's subsequent conduct in surreptitiously breaching the agreement by changing the beneficiary within a few days after his marriage to Donna constituted a constructive fraud.

In the case of *Voelkel v. Tohulka,* 238 Ind. 588, 141 N.E.2d 344, cert. denied, 355 U.S. 891 (1957), discussed above, the court stated, in imposing a constructive thrust upon the proceeds of the deceased serviceman's military insurance policy that:

> . . . if there is a breach of confidence coupled with an unjust enrichment which shocks the conscience it is

> permitted to stand, it is then said to be a "constructive" fraud. To hold otherwise, it is said, is rewarding bad faith. *Id.* at p. 349 of 141 N.E.2d.

Similarly, in *Guiterrez v. Madero,* 546 S.W.2d 187, 189 (Tex. Civ. App. 1978), the court said:

> In failing to maintain his children as the beneficiaries and redesignating the beneficiary as Mary Madero, Rudy Gutierrez misappropriated the children's interest in the policy. This misappropriation constituted constructive fraud. In order to provide relief to the aggrieved minor children, a constructive trust may be imposed. See also *Simonds v. Simonds,* 45 N.Y.2d 233, 380 N.E.2d 189, 194 (1978).

In *Wissner v. Wissner,* 388 U.S. 655 (1950), upon which petitioners so heavily rely, there was no suggestion of fraud or breach of a fiduciary relationship on the part of the deceased serviceman. Although the marital relationship had become strained, there was no divorce and no agreement regarding a division of property preceding Major Wissner's designation of his parents as the beneficiaries of his military life insurance. The widow's legal position was based on an asserted community property interest in the insurance proceeds traceable through the premiums rather than upon a commitment made by her husband to retain her as the beneficiary of his NSLI Policy. Thus, as far as the Court's opinion indicates, there was no basis upon which a constructiv trust could have been imposed. *Wissner* is therefore consistent with the Court's statement in *Free v. Bland, supra,* that statutes regulating federal property rights will not be permitted to serve as a "shield for fraud". *Id.* at 670.

C. The Ridgway Children Are Not "Creditors" Within The Meaning Of 38 U.S.C. §770(g).

Petitioners argue that regardless of whether Donna Ridgway would be unjustly enriched, the insurance proceeds are insulated from the claims of creditors by the language of 38 U.S.C. §770(g). Their contention is inconsistent wth the well settled rule that the claims of dependents arising out of the family relationship are not the type of debts which §770(g) was intended to protect against.

Although no cases have been found involving the application of §770(g) to an obligation under a property settlement agreement and divorce decree to make an insurance policy payable to children of a serviceman's first marriage, this language has been interpreted a number of times in the context of attempts to enforce the claims of dependents for support out of veterans' benefits. These cases arose under 38 U.S.C. §3101a or its predecessor, 38 U.S.C. §454a. The language of these sections is identical to that used in §770(g). In the case of *Gaskins v. Security-First Nat. Bank,* 30 Cal.App.2d 409, 86 P.2d 681, 688 (Dist. Ct. of App. 1939), the court stated in response to an exemption argument based on the language of section 454a that:

> The obligation of a father to support his minor children is not a *debt* contemplated by this act of Congress, but is an obligation growing out of the parental status and public policy. . ., and we cannot assume that the Federal government ever intended to throw around these federal funds legal strictures that would permit or enable the beneficiaries thereof to refuse to discharge their duty to support their children. See also *In re Flanagan,* 31 F.Supp. 403 (D. D.C. 1940); *Re Bagnall's Guardianship,* 238 Iowa 905, 24 N.W.2d 597, 612 (1947).

A similar conclusion was expressed in the case of *Voelkel v. Tohulka,* 238 Ind. 588, 141 N.E.2d (1957), cert. denied,

355 U.S. 891 (1957), discussed above. In holding that a constructive trust should be placed on insurance proceeds for the benefit of the deceased serviceman's relatives despite the contention of the named beneficiary that they were insulated from such claims under 38 U.S.C. §454a (analogue of §770(g)), the court said that:

> It is plain (that) the object of this section is to protect the beneficiaries who are, by the act, close relatives and dependents of the deceased soldier from their own improvidence. This is in effect what is commonly known as a "spendthrift" clause. Clearly the purpose of section 454a, supra, is to prevent creditors from taking the proceeds of the soldier's insurance from his beneficiaries. We feel it should be interpreted in that light. The words "equitable process whatever" is limited to those processes brought by creditors. *Id.* at p. 346 of 141 N.E.2d.[6]

The same distinction between obligations to make payments for alimony and support and other types of debt was recognized by this court in the case of *Wissner v. Wissner,* 388 U.S. 655 (1950). In that case the Court rejected the claim of a serviceman's widow that she was entitled to a portion of the proceeds of his military life insurance since the premiums had been paid out of community property. The Court distinguished several of the cases cited above on the grounds that:

> . . . (T)he community property principle rests upon something more than the moral obligation of supporting spouse and children: The business relationship of man

[6]A similar distinction has been made regarding governmental entities seeking reimbursement for support provided to disabled veterans. See e.g. *Department of Health & Rehab. Services v. Davis,* 616 F.2d 828 (5th Cir. 1980); *Savoid v. Dist. of Columbia,* 288 F.2d 851 (D.C. Cir. 1961); *In re Bemowski's Guardianship,* 3 Wis.2d 133, 88 N.W.2d 22 (1958).

> and wife for their mutual monetary profit. . . Venerable and worthy as this community is, it is not, we think, as likely to justify an exception to the congressional language as specific recognition of particular needs, in the alimony and support cases. *Id.* at 660.

Petitioners have discussed the *Wissner* decision as if it supported their positions, completely ignoring the fact that the Court there distinguished the very cases relied upon here to demonstrate that the Ridgway children are not among those to whom the exemption applies. In *Hisquierdo v. Hisquierdo,* 439 U.S. 572, 99 S.Ct. 802, 813 (1979), the Court explained that the distinction made in *Wissner* was based on the fact that claims for support and alimony are based on "need" whereas community property claims are not. Nothing about the Court's discussion suggests that the same distinction would not also be made in the case at bar.

It is also significant that sub-section 770(g) was added to the SGLIA in 19970. See 91 Stat. 291. By that time, judicial construction of the existing analogues of 38 U.S.C. § 770(g) had crystallized an exception for financial obligations arising out of the family relationship. In a 1957 A.L.R. annotation entitled "Enforcement of claims for alimony or support, or for attorneys' fees and costs incurred in connection therewith, against exemptions", it was stated that:

> With very few exceptions the cases hold that payments arising from service in the Armed Forces, or property acquired with such payments, though exempt as to the claims of ordinary creditors, are not exempt from a claim for alimony, support or maintenance. . . Annot., 54 A.L.R.2d 1422, 1437 (1957).

The D.C. Circuit Court of Appeals reached the same conclusion in *Schlaefer v. Schlaefer,* 112 F.2d 177, 130 A.L.R. 1014 (D.C. Cir. 1940). In an opinion written by Mr.

Justice Rutledge, the court concluded, after setting forth the relevant case authority at great length, that:

> The obligation on which appellant's claim is based is not a "debt" or a "liability" in the ordinary usages of those terms. (Citations omitted). It is a duty of higher obligation. As has been said, it is not one within the usual purposes of exemption statutes. (Citations omitted) . . . While the analogies are not entirely free from conflict, the clear weight of authority[7] and the better considered reasoning supports the view we have taken. *Id* at pp. 1025-27 of 130 A.L.R.[8]

On the basis of the foregoing, it may be presumed that Congress intended 38 U.S.C. §770(g) to be construed in the same manner as its analogues in previously enacted exemption statutes. *Cannon v. University of Chicago,* 441 U.S. 677, 99 S.Ct. 1946, 1957-58 (1979).

The Solicitor General argues that even if the Ridgway children are not "creditors" under §770(g), they are nevertheless barred by the language prohibiting the use of legal or equitable process to reach the insurance proceeds

---

[7]This authority was specifically recognized by this Court in *Wissner v. Wissner, supra.*

[8]Oddly enough, the Solicitor General argues that the weight of judicial authority in 1970 was to the contrary. Sol. Gen'l's brief, p. 19, n. 18. In support of this position, he has cited three cases, two of which have nothing to do with exemption statutes. In *Bonner v. U.S.,* 222 F.Supp. 539 (D. Mass. 1963), a serviceman transferred his NSLI policy to his wife at the time of divorce, but later named his second wife as beneficiary. The court held that he retained the right to change beneficiaries but neither cited nor discussed §3101a. In *Heifner v. Soderstrom,* 134 F.Supp. 174 (N.D. Iowa 1955), the District Court ruled that a divorce decree conveying all community property to the wife did not bar the serviceman's right to change the beneficiary of his NSLI policy. The court did not discuss §3101a and specificially reserved the question of whether a constructive trust would be imposed under appropriate circumstances.

before or after they are received. He contends that any other reading would turn that portion of the statute into surplusage. Sol. Gen'l's brief, p. 20. On the other hand, his reading of the statute would not improve it. The language exempting benefits from claims of creditors would become redundant under his interpretation since the prohibition on the use of any legal or equitable process is obviously broad enough to bar enforcement of any creditor's claim. In addition, the Solicitor General's reading of the statute has uniformly been rejected by the cases. See e.g. *Voelkel v. Tohulka,* 238 Ind. 588, 141 N.E.2d 344, 346 (1957), cert. denied, 355 U.S. 891 (1957). Section 770(g) should therefore be read to reflect this judicial construction of its analogues which existed in 1970 when it was added to the SGLIA.

The Solicitor General also argues that even if §770(g) does not exempt claims for "child support', the Ridgway children would nevertheless be barred since insurance proceeds are not within the exemption. Sol. Gen'l's brief, p. 21. It seems obvious, however, that, in the event of Richard Ridgway's death, the insurance money was intended to replace his obligation under the divorce decree to make monthly support payments, pay the children's medical and dental expenses, and contribute to the purchase of their clothing. It is difficult to see how the purpose of this fund of money could be described other than as "child support". Indeed, when Richard Ridgway died, his insurance was the only available source of cash to meet these expenses other than April Ridgway's earnings and public welfare.

The Solicitor General's argument also misses the point of the cases which have held that exemption statutes like 38 U.S.C. §770(g) do not apply to claims like alimony and child support. These cases proceed on the theory that "the obligation of a father to support his minor children is not a

debt within the meaning of the statute, but it is an obligation growing out of the parental status and public policy." *American Law of Veterans* 32 (2d ed. 1954). In the case at bar, the source of the obligation to furnish insurance to provide funds for the children's support in the event of Richard Ridgway's death arose, not as a result of any commercial or contractual commitment, but because he was the children's father. Thus the Ridgway children are not "creditors" within the meaning of §770(g) any more than they would have been had they been seeking to collect child support payments directly from their father's veteran's pension.

In the final analysis, there is a certain unreality about petitioners' arguments in light of their apparent concession that Donna Ridgway will be unjustly enriched by the result they seek. Surely the judgment this Court is being asked to reach ought to be justified on some policy basis which serves a larger good even though absurd and unjust results would admittedly occur in individual cases. None is suggested.

Although Prudential Insurance Company is apparently concerned that it will become "enmeshed" in a wave of litigation[9] if the Ridgway children are permitted to receive the insurance proceeds, the basis for these apprehensions remains unclear. As pointed out above, the imposition of a constructive trust to prevent unjust enrichment will not bar Prudential from paying the person shown by its files to be the serviceman's designated beneficiary. If Prudential is made subject to court-ordered restraint in making payment while the insurance money remains in its hands, it can avoid the necessity of resolving competing claims for payment by interpleading the contesting parties and paying the insurance proceeds into court. The cost of this relatively simple

[9]Pet'rs' brief, p. 28.

procedure can legitimately be passed onto to policy-holders in the form of increased premiums. The nominal expense involved in the interpleader procedure is amply justified as a means of preventing the unjust enrichment of persons who would otherwise receive a windfall benefit from the misconduct of the insured.

The increase in litigation which Prudential fears is illusory. Of the number of servicemen who presently have SGLI policies in effect and become divorced, only a comparative few will actually commit themselves in property settlement agreements to keep their SGLI policies in effect for the benefit of their children or ex-wives. Most of these servicemen will honor their agreements. It is only those few who renege on their commitments and defy court orders directing them to maintain their insurance in force for their family members who will provoke a request that a constructive trust will be imposed.

The result contended for by petitioners would produce other unfortunate results. Because the subject of military life insurance comes up infrequently in divorce cases, practitioners not specializing in the field are likely to be unaware of precedents holding that such policies may not safely be made a part of the division of the marital property. Thus the resolution petitioners propose would create a trap for the unwary from which relief through a judicially imposed constructive trust would no longer be available regardless of the equities involved.

If divorcing spouses became aware of the difficulties of binding a serviceman to maintain his life insurance in effect for his children or ex-wife, they might find it impossible to deal effectively with the policy as an asset in any division of the marital property. The insurance would have little value for the dependents, if petitioners' contentions are accepted,

because they would have no guarantee that their designation as beneficiaries would be maintained. It would also be useless to the serviceman if he had no other family members who were dependent on him for support. Thus a serviceman who intended in good faith to provide life insurance for the benefit of his children might nevertheless be required to purchase a new policy from a private insurer in order to provide acceptable assurance to his ex-wife and her attorney that his expressed intention would in fact be carried out. The problem would be particularly acute if the sericeman had a medical condition which made it difficult or impossible for him to obtain private life insurance.

Finally, it should be noted that the decision of the court below does not adversely affect the right of an insured serviceman to change the beneficiary of his service life insurance policy at any time. Except in cases in which the serviceman is attempting to defraud a dependent who has a legitimate interest in the policy proceeds, the named beneficiary will retain them.

Despite the suggestion of the Solicitor General to the contrary, there is nothing in the legislative history to indicate that Congress gave any thought whatever to placing proceeds of SGLI policies beyond the reach of family members whom the serviceman had promised to retain as beneficiaries. Indeed, it is incredible to suppose that Congress would have intended that the protection afforded to its servicemen would extend so far. In 1974, Congress adopted several amendments to the Social Security Laws specifically designed to facilitate collection of unpaid alimony and child support payments from military personnel and other federal employees. See 93 Stat. 647, 42 U.S.C. §659. During the floor debates on these measures, Senator Montoya stated:

> Mr. President, it seems clear to me that the civil or military services of the U. S. Government are dis-

> honored when employees or former employees are allowed to become deadbeats and are protected from court action to collect family support money.
>
> The women who are left to fend for themselves in these cases are usually unskilled, middle-aged wives and mothers who are unprepared to enter the labor market in competition with younger and better-trained women. They have children who need the help and support of both a father and a mother. When the support of the father is withdrawn, it is too often the State which must take over with welfare payments.
>
> Mr. President, the child support proposal contained in the committee substitute will give us an opportunity to prove to these women and children that justice exists for them, too, in the United States. 120 Cong. Record 40339 (1974).

Petitioners would nevertheless have it that, despite the Congressional sentiment for providing "justice" for children whose servicemen fathers were refusing to support them, Congress intended to make an exception where military insurance is involved. The suggestion that Congress could have intended such a result is particularly incredible where the serviceman in question has specifically contracted to make his serviceman's life insurance policy payable to his children and they have depended upon him to fulfill that commitment.

In *Hisquierdo v. Hisquierdo,* 439 U.S. 572, 99 S.Ct. 802, 808 (1979), this Court stated that:

> On the rare occasion where state family law has come into conflict with a federal statute, this Court has limited review under the Supremacy Clause to a determination whether Congress has "positively required by direct enactment" that state law be pre-empted. . . . A mere conflict in words is not sufficient. State family and family property law must do "major damage" to "clear

> and substantial" federal interests before the Supremacy Clause will demand that state law be overriden. . . .

Petitioners have not met this rigorous standard. Moverover, they have completely failed to point to any justification based on preservation of federal interests for construing the SGLIA in a manner which would produce the obviously unjust result which they insist that the Court must reach in the present case.

CONCLUSION

For the reasons set out above, the decision of the Maine Supreme Judicial Court should be affirmed.

Respectfully submitted,

/s/ Curtis Webber

Court-appointed Counsel for Respondents